

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
RULES OF PROFESSIONAL CONDUCT 1.17, 1.18, AND 5.5**

APPENDIX TO THE PETITION OF THE VIRGINIA STATE BAR

Brian L. Buniva, President
Karen A. Gould, Executive Director
James M. McCauley, Ethics Counsel
Emily F. Hedrick, Asst. Ethics Counsel
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026
Phone (804) 775-0500
Fax (804) 775-0501

TABLE OF CONTENTS

I.	VSB Council Agenda for October 23, 2020	1
II.	Ethics Committee Agenda for April 10, 2019	4
III.	Publication Notifications seeking public comment: VSB Rule Changes; VSB E-News	5
IV.	Affidavit of Karen A. Gould	23

**VIRGINIA STATE BAR
COUNCIL MEETING
HOT SPRINGS, VIRGINIA
FRIDAY, OCTOBER 23, 2020**

AGENDA

**9:00 a.m. Council Meeting – Grand Ballroom West
The Omni Homestead Resort, Hot Springs, VA**

I. Reports and Information Items

- | | |
|--|---|
| A. President's report – Brian L. Buniva, President | 1 |
| B. Executive Director's report – Karen A. Gould, Executive Director | 2 |
| C. Financial reports by Crystal T. Hendrick, Finance/Procurement
Director (presented by Karen Gould) | |
| -- Financial Report for FY 2020 | 3 |
| -- Current Financial Report | 4 |
| D. Bar Counsel's report by Renu M. Brennan, Bar Counsel
(presented by Karen Gould) | 5 |
| E. Conference of Local and Specialty Bar Associations report –
Susan G. Rager, CLSBA chair (presented by Karen Gould) | 6 |
| F. Diversity Conference report – Sheila M. Costin, DC chair | 7 |
| G. Senior Lawyers Conference report – Margaret A. Nelson,
SLC chair | 8 |
| H. Young Lawyers Conference report – Melissa Y. York, YLC president | 9 |
| I. Opportunity for questions and comments | |

II. Action Items

- | | |
|--|----|
| A. Approval of minutes of February 29, 2020 meeting | 10 |
| B. Proposed LEO 1850 – Emily F. Hedrick, Assist. Ethics Counsel,
Standing Committee on Legal Ethics | 11 |
| C. Proposed amendments to Rules of Professional Conduct 1.17,
1.18, and 5.5 – Emily F. Hedrick, Assistant Ethics Counsel,
Standing Committee on Legal Ethics | 12 |
| D. Nominating Committee report – Marni E. Byrum, Nominating
Committee chair | 13 |

- E. Diversity Conference bylaw amendments – Sheila M. Costin,
DC chair 14
- F. Proposed amendments to Paragraph 13-6.D – Cameron M. Rountree,
Deputy Executive Director 15
- G. Proposed bylaw amendment to change audit requirement –
Cameron M. Rountree, Deputy Executive Director 16

III. Presentations

- A. Tribute to the late Justice Ruth Bader Ginsburg – Marni E. Byrum,
Immediate Past President
- B. VSB president-elect introductions
- C. Presentation of resolutions honoring Marni E. Byrum –
Brian L. Buniva, President 17

IV. Notice of Upcoming Receptions, Dinners & Meetings¹

12 Noon, Friday, February 26, 2021, lunch and Executive Committee meeting, 3rd Floor Conference Room, 1111 E. Main St., Richmond (Bank of America building).

6:30 p.m., Friday, February 26, 2021, Council reception and dinner, Virginia Museum of Fine Arts, 200 N. Arthur Ashe Blvd., Richmond.

9:00 a.m., Saturday, February 27, 2021, Council meeting, Omni Richmond Hotel, 100 S. 12th Street, Richmond.

12 Noon, Thursday, April 22, 2021, lunch and Executive Committee meeting, 3rd Floor Conference Room, 1111 E. Main St., Richmond (Bank of America building).

12 Noon, Wednesday, June 16, 2021, lunch and Executive Committee meeting, Holiday Inn North Beach, 3900 Atlantic Avenue, Virginia Beach.

6:30 p.m., Wednesday, June 16, 2021, Council reception and dinner, Sheraton Virginia Beach Oceanfront Hotel, 3501 Atlantic Avenue, Virginia Beach.

9:00 a.m., Thursday, June 17, 2021, Council meeting, Cape Henry Room, Holiday Inn & Suites North Beach, 3900 Atlantic Ave., Virginia Beach.

12:30 p.m., Thursday, October 21, 2021, lunch and Executive Committee meeting, location TBD.

¹ All meeting dates and locations are subject to change or cancellation, dependent upon the course of the pandemic.

6:30 p.m., Thursday, October 21, 2021, Council reception and dinner, location TBD.

9:00 a.m., Friday, October 22, 2021, Council meeting, location TBD.

12 noon, Friday, February 25, 2022, lunch and Executive Committee meeting, 1111 E. Main St., 3rd Floor Conference Room, Richmond (Bank of America building).

6:30 p.m., Friday, February 25, 2022, Council reception and dinner, Virginia Museum of Fine Arts, 200 N. Arthur Ashe Blvd., Richmond.

9:00 a.m., Saturday, February 26, 2022, Council meeting, Omni Richmond Hotel, 100 S. 12th Street, Richmond.

**VIRGINIA STATE BAR
STANDING COMMITTEE ON LEGAL ETHICS**

Wednesday, April 10, 2019
10:00 a.m.
Richmond, Virginia

AGENDA

I. APPROVAL OF MINUTES

II. RULE AMENDMENTS

- A. Rule 3.8 – Information only/Update on Council and SCV proceedings
- B. Rule 4.4(b) – Receipt of inadvertently-disclosed document or electronically stored information
- C. Rule 5.5 – Unauthorized practice of law; Multijurisdictional practice of law
- D. Rule 1.17 – Sale of Law Practice
- E. Rule 1.18 – Duties to Prospective Client

III. OPINIONS

- A. LEO 1890 – Rule 4.2 compendium
Comments received from: Goodman, Weiss, Williams, Marku (NVBIA), Stroman, Moffet and Stone
- B. LEO 1891 – Communication with represented government officials
Comments received from: Marku (NVBIA), Blair (LGA), Woolard, Stroman
- C. LEO 1872 – Virtual law office and use of executive office suites
- D. LEO 1750 – Advertising compendium opinion
- E. Proposed FAQ – Application of Rule 4.2 to limited scope representation

IV. ADJOURNMENT



Virginia State Bar

Seeking Public Comment

1111 East Main Street, Suite 700
 Richmond, Virginia 23219-0026
 Telephone: (804) 775-0500

 Facsimile: (804) 775-0501 TDD (804) 775-0502

MEDIA CONTACT: James M. McCauley, Ethics Counsel

RELEASE DATE: April 15, 2019

VIRGINIA STATE BAR'S STANDING COMMITTEE ON LEGAL ETHICS SEEKING PUBLIC COMMENT ON PROPOSED AMENDMENTS TO RULES 1.17, 1.18, AND 5.5 OF THE RULES OF PROFESSIONAL CONDUCT

RICHMOND - Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed amendments to Rules 1.17, 1.18, and 5.5 of the Rules of Professional Conduct.

The proposed amendment to Rule 1.17 corrects a word choice issue in Comment 12, replacing the word "concluded" with the word "included." The proposed amendment to Rule 1.18 removes a phrase from Comment 6 to the Rule, "the lawyer believes that an effective screen could not be engaged to protect the client," which is inconsistent with the section of the rule the comment is interpreting. Paragraph (c) of the Rule, and the balance of Comment 6, provides that a lawyer is not disqualified by a contact with a prospective client so long as she has not received significantly harmful information from the prospective client, and there is no need for a screen to be used under the circumstances. The language that the Committee proposes to delete does not belong in that comment, because either the lawyer is not disqualified and there is no need to form a belief about the effectiveness of a screen, or the lawyer is disqualified under paragraph (c) and paragraph (d) of the Rule, and Comments 7 and 8, must be applied to the situation.

The proposed amendments to Rule 5.5 include updating Comments 4 and 21 to reflect the current numbering of the advertising rules and correcting Comment 6, which twice uses the phrase "Foreign lawyer," when "Foreign Lawyer" is a defined term under the rule and should be capitalized in every instance. The proposed amendments also revise Comment 14 to remove the

phrase “(d)(4)(ii)” from the introductory sentence; that comment refers to the requirement of paragraphs (d)(4)(iii) and (d)(4)(iv) that the services provided in Virginia arise out of or be reasonably related to the Foreign Lawyer’s practice elsewhere, but paragraph (d)(4)(ii) does not contain such a requirement in the body of the Rule and therefore should not be included in this comment.

Inspection and Comment

The proposed rule amendments may be inspected below or at the office of the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0060, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, or by contacting the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **May 24, 2019**. Comments may be submitted via email to publiccomment@vsb.org.

 Search

VSB Home

Rules and Regulations

Rules of Professional Conduct

Legal Ethics Opinions

Unauthorized Practice of Law Opinions

Organization & Government of the Virginia State Bar

Reciprocity: Admission on Motion

Pro Hac Vice

Corporate Counsel Limited Admission and Registration

Foreign Attorneys — Registered Military Legal Assistance Attorneys

Foreign Legal Consultant

Military Spouse Provisional Admission

Bylaws of the Virginia State Bar and Council

Unauthorized Practice Rules

Mandatory Continuing Legal Education Regulations

MCLE Forms 2, 3 and 4

Clients' Protection Fund Rules

Attorney Trust Account Regulations

Regulations of Attorney Real Estate Settlement Agents

Virginia Licensed Legal Aid Society Regulations

Principles of Professionalism

Provision of Legal Services Following Determination of Major Disaster

The Virginia State Bar

Professional Guidelines

Search the Professional Guidelines

 Search

[Home](#) > [Actions on Rule Changes and Legal Ethics Opinions](#) > amendment to Rule 1.17, Sale of Law Practice, in Comment 12.

Proposed | amendment to Rule 1.17, Sale of Law Practice, in Comment 12. Comments due May 24.

Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics is seeking public comment on a proposed amendment to Rule 1.17 of the Rules of Professional Conduct.

[View the Current Rule](#)

The proposed amendment to Rule 1.17 corrects a word choice issue in Comment 12, replacing the word "concluded" with the word "included."

Inspection and Comment

The proposed rule amendments may be inspected below or at the office of the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0060, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, or by contacting the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **May 24, 2019**. Comments may be submitted via email to publiccomment@vsb.org.

RULE 1.17 Sale Of Law Practice

A lawyer or a law firm may sell or purchase a law practice, partially or in its entirety, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted, except the lawyer may practice law while on staff of a public agency or legal services entity which provides legal services to the poor, or as in-house counsel to a business.

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms.

(c) Actual written notice is given by the seller to each of the seller's clients (as defined by the terms of the proposed sale) regarding:

(1) the proposed sale and the identity of the purchaser;

(2) any proposed change in the terms of the future representation including the fee⁸ arrangement;

(3) the client's right to consent or to refuse to consent to the transfer of the client's matter, and that said right must be exercised within ninety (90) days of receipt of the notice;

(4) the client's right to retain other counsel and/or take possession of the file; and

(5) the fact that the client's refusal to consent to the transfer of the client's matter will be presumed if the client does not take any action or does not otherwise consent within ninety (90) days of receipt of the notice.

(d) If a client involved in a pending matter cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(e) The fees charged clients shall not be increased by reason of the sale.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice and another lawyer or firm takes over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by Seller

[2] The fact that a number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere does not result in a violation. Neither does the seller's return to private practice after the sale as a result of an unanticipated change in circumstances result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon leaving the office.

[3] Comment [3] to *ABA Model Rule 1.17* substantially appears in paragraph (a) of this Rule.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction.

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The

prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of any lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or to make other arrangements must be made within 90 days. If nothing is heard from the client within that time, the client's refusal to consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interest will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered *in camera*.

[9] All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of work must be honored by the purchaser, unless the client consents after consultation.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to assure that the purchaser is qualified to assume the practice and the purchaser's obligation to undertake the representation competently (*see* Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure client consent after consultation for those conflicts which can be agreed to (*see* Rule 1.7); and the obligation to protect information relating to the representation (*see* Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included ~~excluded~~ in the sale (*see* Rule 1.16).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not

subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer shall see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

Updated: April 15, 2019

© 1996 - 2019 Virginia State Bar | [Privacy Policy](#)

1111 East Main Street, Suite 700 | Richmond, Virginia 23219-0026

All Departments: (804) 775-0500

Telecommunication Device for the Deaf/TDD (Hearing-Impaired Only): 804-775-0502

Office Hours: Mon.-Fri. 8:15 a.m. to 4:45 p.m. (excluding holidays)

The Clerk's Office does not accept filings after 4:45 p.m.



VSB Home

Rules and Regulations

Rules of Professional Conduct

Legal Ethics Opinions

Unauthorized Practice of Law
Opinions

Organization & Government of
the Virginia State Bar

Reciprocity: Admission on
Motion

Pro Hac Vice

Corporate Counsel Limited
Admission and Registration

Foreign Attorneys —
Registered Military Legal
Assistance Attorneys

Foreign Legal Consultant

Military Spouse Provisional
Admission

Bylaws of the Virginia State
Bar and Council

Unauthorized Practice Rules

Mandatory Continuing Legal
Education Regulations

MCLE Forms 2, 3 and 4

Clients' Protection Fund Rules

Attorney Trust Account
Regulations

Regulations of Attorney Real
Estate Settlement Agents

Virginia Licensed Legal Aid
Society Regulations

Principles of Professionalism

Provision of Legal Services
Following Determination of
Major Disaster

The Virginia State Bar

Professional Guidelines

Search the Professional Guidelines

 Search

[Home](#) > [Actions on Rule Changes and Legal Ethics Opinions](#) > amendment to Rule 1.18, Duties to Prospective Client, in Comment 6.

Proposed | amendment to Rule 1.18, Duties to Prospective Client, in Comment 6. Comments due May 24.

Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics is seeking public comment on proposed amendments to Rule 1.18 of the Rules of Professional Conduct.

[View the Current Rule](#)

The proposed amendment to Rule 1.18 removes a phrase from Comment 6 to the Rule, "the lawyer believes that an effective screen could not be engaged to protect the client," which is inconsistent with the section of the rule the comment is interpreting. Paragraph (c) of the Rule, and the balance of Comment 6, provides that a lawyer is not disqualified by a contact with a prospective client so long as she has not received significantly harmful information from the prospective client, and there is no need for a screen to be used under the circumstances. The language that the Committee proposes to delete does not belong in that comment, because either the lawyer is not disqualified and there is no need to form a belief about the effectiveness of a screen, or the lawyer is disqualified under paragraph (c) and paragraph (d) of the Rule, and Comments 7 and 8, must be applied to the situation.

Inspection and Comment

The proposed rule amendments may be inspected below or at the office of the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0060, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, or by contacting the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **May 24, 2019**. Comments may be submitted via email to publiccomment@vsb.org.

RULE 1.18 Duties to Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; the disqualified lawyer reasonably believes that the screen would be effective to sufficiently protect information that could be significantly harmful to the prospective client; and

(ii) written notice that includes a general description of the subject matter about which the lawyer was consulted and the screening procedures employed is promptly given to the prospective client.

COMMENT

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. The principle of loyalty diminishes in importance if the sole reason for an individual lawyer's disqualification is the lawyer's initial consultation with a prospective new client with whom no client-lawyer relationship is formed, either because the lawyer detected a conflict of interest as a result of an initial consultation, or for some other reason (e.g., the prospective client decided not to retain the firm). Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The client may disclose such information as part of the process of determining whether the client wishes to form a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such

information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter ~~and the lawyer believes that an effective screen could not be engaged to protect the client.~~

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client and the lawyer reasonably believes that an effective screen will protect the confidential information of the prospective client. Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

Updated: April 15, 2019



VSB Home

Rules and Regulations

Rules of Professional Conduct

Legal Ethics Opinions

Unauthorized Practice of Law
Opinions

Organization & Government of
the Virginia State Bar

Reciprocity: Admission on
Motion

Pro Hac Vice

Corporate Counsel Limited
Admission and Registration

Foreign Attorneys —
Registered Military Legal
Assistance Attorneys

Foreign Legal Consultant

Military Spouse Provisional
Admission

Bylaws of the Virginia State
Bar and Council

Unauthorized Practice Rules

Mandatory Continuing Legal
Education Regulations

MCLE Forms 2, 3 and 4

Clients' Protection Fund Rules

Attorney Trust Account
Regulations

Regulations of Attorney Real
Estate Settlement Agents

Virginia Licensed Legal Aid
Society Regulations

Principles of Professionalism

Provision of Legal Services
Following Determination of
Major Disaster

The Virginia State Bar

Professional Guidelines

Search the Professional Guidelines

 Search

[Home](#) > [Actions on Rule Changes and Legal Ethics Opinions](#) > amendment to Rule 5.5, Unauthorized Practice Of Law; Multijurisdictional Practice of Law.

Proposed | amendment to Rule 5.5, Unauthorized Practice Of Law; Multijurisdictional Practice of Law. Comments due May 24.

Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics is seeking public comment on proposed amendments to Rule 5.5 of the Rules of Professional Conduct.

[View the Current Rule](#)

The proposed amendments to Rule 5.5 include updating Comments 4 and 21 to reflect the current numbering of the advertising rules and correcting Comment 6, which twice uses the phrase "Foreign lawyer," when "Foreign Lawyer" is a defined term under the rule and should be capitalized in every instance. The proposed amendments also revise Comment 14 to remove the phrase "(d)(4)(ii)" from the introductory sentence; that comment refers to the requirement of paragraphs (d)(4)(iii) and (d)(4)(iv) that the services provided in Virginia arise out of or be reasonably related to the Foreign Lawyer's practice elsewhere, but paragraph (d)(4)(ii) does not contain such a requirement in the body of the Rule and therefore should not be included in this comment.

Inspection and Comment

The proposed rule amendments may be inspected below or at the office of the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0060, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, or by contacting the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **May 24, 2019**. Comments may be submitted via email to publiccomment@vsb.org.

RULE 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

(a) A lawyer, law firm or professional corporation shall not employ in any capacity a lawyer whose license has been suspended or revoked for professional misconduct, during such period of suspension or revocation, if the disciplined lawyer was associated with such lawyer, law firm, or professional corporation at any time on or after the date of the acts which resulted in suspension or revocation.

(b) A lawyer, law firm or professional corporation employing a lawyer as a consultant, law

clerk, or legal assistant when that lawyer's license is suspended or revoked for professional misconduct shall not represent any client represented by the disciplined lawyer or by any lawyer with whom the disciplined lawyer practiced on or after the date of the acts which resulted in suspension or revocation.

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(d) Foreign Lawyers:

(1) "Foreign Lawyer" is a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia, or a foreign nation, but is neither licensed by the Supreme Court of Virginia or authorized under its rules to practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice in any jurisdiction.

(2) A Foreign Lawyer shall not, except as authorized by these Rules or other law:

(i) establish an office or other systematic and continuous presence in Virginia for the practice of law, which may occur even if the Foreign Lawyer is not physically present in Virginia; or

(ii) hold out to the public or otherwise represent that the Foreign Lawyer is admitted to practice law in Virginia.

(3) A Foreign Lawyer shall inform the client and interested third parties in writing:

(i) that the lawyer is not admitted to practice law in Virginia;

(ii) the jurisdiction(s) in which the lawyer is licensed to practice; and

(iii) the lawyer's office address in the foreign jurisdiction.

(4) A Foreign Lawyer may, after informing the client as required in 3(i)-(iii) above, provide legal services on a temporary and occasional basis in Virginia that:

(i) are undertaken in association with a lawyer who is admitted to practice without limitation in Virginia or admitted under Part I of Rule 1A:5 of this Court and who actively participates in the matter;

(ii) are in or reasonably related to a pending or potential proceeding before a tribunal in Virginia or another jurisdiction, if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(iii) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in Virginia or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(iv) are not within paragraphs (4)(ii) or (4)(iii) and arise out of or are reasonably related to the representation of a client by the Foreign Lawyer in a jurisdiction in which the Foreign Lawyer is admitted to practice or, subject to the foregoing limitations, are governed primarily by international law.

(5) A foreign legal consultant practicing under Rule 1A:7 of this Court and a corporate

counsel registrant practicing under Part II of Rule 1A:5 of this Court are not authorized to practice under this rule.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (c) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[1a] For purposes of paragraphs (a) and (b), "Lawyer" denotes a person authorized by the Supreme Court of Virginia or its Rules to practice law in the Commonwealth of Virginia including persons admitted to practice in this state pro hac vice.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unauthorized persons. Paragraph (c) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] Likewise, the definition of the practice of law does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law — for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies.

[4] Other than as authorized by law or this Rule, a Foreign Lawyer violates paragraph (d)(2)(i) if the Foreign Lawyer establishes an office or other systematic and continuous presence in Virginia for the practice of law. Presence may be systematic and continuous even if the Foreign Lawyer is not physically present here. Such "non-physical" presence includes, but is not limited to, the regular interaction with residents of Virginia for delivery of legal services in Virginia through exchange of information over the Internet or other means. Such Foreign Lawyer must not hold out to the public or otherwise represent that the Foreign Lawyer is admitted to practice law in Virginia. See also, Rules 7.1(a) and 7.5(b). Despite the foregoing general prohibition, a Foreign Lawyer may establish an office or other systematic and continuous presence in Virginia if the Foreign Lawyer's practice is limited to areas which by state or federal law do not require admission to the Virginia State Bar. Examples of lawyers admitted in another United States jurisdiction include those lawyers whose practices are limited to federal tax practice before the IRS and Tax Court, patent law before the Patent and Trademark Office, or immigration law. A Foreign Lawyer admitted to practice in a jurisdiction outside the United States may be authorized to practice under Rule 1A:7 as a foreign legal consultant and may likewise establish an office or other systematic and continued presence in Virginia.

[5] Paragraph (d)(4) identifies circumstances in which a Foreign Lawyer may provide legal services on a temporary basis in Virginia that do not create an unreasonable risk to the interests of their clients, the public, or the courts. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. Except as authorized by this rule or other law, a Foreign Lawyer may not establish an office or other systematic and continuous presence in Virginia without being admitted to practice generally here.

[6] There is no single test to determine whether a Foreign Lawyer's services are provided on a "temporary basis" in Virginia, and may therefore be permissible under paragraph (d)(4). Services may be "temporary" even though the Foreign Lawyer provides services in Virginia on a recurring basis, or for an extended period of time, as when the Foreign Lawyer is representing a client in a single lengthy negotiation or litigation. "Temporary" refers to the duration of the Foreign Lawyer's

presence and provision of services, while "occasional" refers to the frequency with which the Foreign Lawyer comes into Virginia to provide legal services.

[7] Paragraph (d)(1) requires that the Foreign Lawyer be authorized to practice in the jurisdiction in which the Foreign Lawyer is admitted and excludes a Foreign Lawyer who, while technically admitted, is not authorized to practice because, for example, the Foreign Lawyer is on inactive status.

[8] Paragraph (d)(4)(i) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice Virginia. For this paragraph to apply, however, the lawyer admitted to practice in Virginia must actively participate in and share responsibility for the representation of the client.

[9] Foreign Lawyers not admitted to practice generally in this jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. Under paragraph (d)(4)(ii), a Foreign Lawyer does not violate this Rule when the Foreign Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of Virginia requires a Foreign Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Foreign Lawyer to obtain that authority.

[10] Paragraph (d)(4)(ii) also provides that a Foreign Lawyer rendering services in Virginia on a temporary basis does not violate this Rule when the Foreign Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Foreign Lawyer is authorized to practice law or in which the Foreign Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Foreign Lawyer may engage in conduct temporarily in Virginia in connection with pending litigation in another jurisdiction in which the Foreign Lawyer is or reasonably expects to be authorized to appear, including taking depositions in Virginia.

[11] *ABA Model Rule* Comment not adopted.

[12] Paragraph (d)(4)(iii) permits a Foreign Lawyer to perform services on a temporary basis in Virginia if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. The Foreign Lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (d)(4)(iv) permits a Foreign Lawyer to provide certain legal services on a temporary basis in Virginia that arise out of or are reasonably related to that lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted but are not within paragraphs (d)(4)(ii) or (d)(4)(iii). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs ~~(d)(4)(ii)~~, (d)(4)(iii); and (d)(4)(iv) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors evidence such a relationship. The Foreign Lawyer's client may have been previously represented by the Foreign Lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the Foreign Lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the Foreign Lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business

sites and seek the services of their Foreign Lawyer in assessing the relative merits of each. In addition, the services may draw on the Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[14a] Paragraph (d)(4)(iv) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction in which the Foreign Lawyer is admitted to practice.

[15 - 18] *ABA Model Rule* Comments not adopted.

[19] A Foreign Lawyer who practices law in Virginia pursuant to this Rule is subject to the disciplinary authority of Virginia. See Rule 8.5(a).

[20] *ABA Model Rule* Comment not adopted.

[21] Paragraph (d)(4) does not authorize communications advertising legal services to prospective clients in Virginia by Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Foreign Lawyers may communicate the availability of their services to prospective clients in Virginia is governed by Rules 7.1 and 7.3 to 7.5.

Updated: April 15, 2019

© 1996 - 2019 Virginia State Bar | [Privacy Policy](#)

1111 East Main Street, Suite 700 | Richmond, Virginia 23219-0026

All Departments: (804) 775-0500

Telecommunication Device for the Deaf/TDD (Hearing-Impaired Only): 804-775-0502

Office Hours: Mon.-Fri. 8:15 a.m. to 4:45 p.m. (excluding holidays)

The Clerk's Office does not accept filings after 4:45 p.m.

Hall, Kristi

From: Virginia State Bar <vsbnews@vsb.org>
Sent: Wednesday, May 1, 2019 5:46 AM
To: Hall, Kristi
Subject: May 2019: Supreme Court actions, Annual Meeting, Council election results and more

Follow Up Flag: Follow up
Flag Status: Flagged



The monthly news summary of the Virginia State Bar
[View this email as a webpage](#)

Governance

The **Supreme Court of Virginia** adopted an amendment to Part Six, Section I of the Rules of Court governing the **Unauthorized Practice of Law**.



On Friday, April 26, 2019, the Court **amended four Rules of Court**, to become effective July 1, 2019.

The Advisory Committee on the Rules of Court of the Supreme Court of Virginia is seeking public comment on revising the rules as they pertain to the use of the **potentially ambiguous word "shall."**

The **Committee on Legal Ethics** seeks public comment on proposed amendments to three Rules of Professional Conduct:

- Rule 1.17 (Sale of Law Practice)
- Rule 1.18 (Duties to Prospective Client)
- Rule 5.5 (Unauthorized Practice Of Law; Multi-jurisdictional Practice of Law)

The Court requests public comment on a proposal to modify Rule 3.8 ("**Additional Responsibilities of a Prosecutor**"). Comments due May 21, 2019.

On April 18, the Court adopted new rules concerning **access to judicial records**, effective June 17, 2019.

On April 26, 2019, the Court adopted an addition to Paragraph 17 of Part Six, Section I of the Rules of Court. Beginning in November 2019, active members must affirm that they have attended at least **one hour of lawyer well-being education** within the past three (3) years.



Thank you for voting!

The VSB welcomes 22 newly-elected and re-elected lawyers to **Bar Council**, the bar's governing body. Their three-year terms begin on July 1.

Professional Regulation

Recent disciplinary actions:

Travis Joseph Tisinger, license revoked, effective April 4, 2019.
John Michael Cassell, license revoked, effective April 26, 2019.
Nancy Beth White, license suspended, effective April 2, 2019.
Angela Dawn Whitley, license suspended, effective April 2, 2019.
Bradley Harlan Field, license suspended, effective April 5, 2019.
Christopher Ryan Jones, license suspended, effective April 9, 2019.
 James Del Sordo, license suspended, effective April 26, 2019
 Peter Robin Estes, license suspended, effective April 26, 2019.

The VSB Disciplinary Board rescheduled the hearing on the **Reinstatement Petition** of Ann Bridgeforth Tribbey of Midlothian to June 28, 2019. The background and request for public comment may be found [here](#).

Annual Meeting

81st Annual Meeting registration is open! Join hundreds of lawyers from across the commonwealth this June for showcase CLEs, award ceremonies, networking, and family fun in Virginia Beach.

Registration by May 10: **\$180**

Late Registration on or after May 10: **\$195**

Registration is **free** for full-time active judges and fully retired judges.



Compliance

Annual Dues period is around the corner. Now is the time to make sure your **address of record** is correct. Log in to the [members area](#) to edit your address online or [use this form](#) to email, fax, or mail your changes to the VSB.

Note: Virginia Corporate Counsel, Corporate Counsel Registrants, Military Legal Assistance Attorneys, and Foreign Legal Consultants can *only* update their address using the form.



Pro Bono



Supreme Court of Virginia **Chief Justice Donald W. Lemons** [reminds all attorneys](#) to consider voluntarily reporting their pro bono activity.

If you're looking for a pro bono case to take on, check out [Justice Server](#). They are now statewide [with a list and map of cases](#) and volunteer opportunities for Virginia lawyers.

Opportunities & Events

Be a mentor! The **Young Lawyers Conference Mentorship Network** (in partnership with the Senior Lawyers Conference) helps newer lawyers learn from experienced lawyers (retired lawyers, too). Take a **quick survey** if you are willing to help!



Annual Military Law Symposium 2019: Serving Those Who Serve

Military Law Section members can pre-register at a discounted rate of \$125. Friday, May 17 on Marine Corps Base Quantico. 6.0 hours CLE (1.0 hours Ethics) Register [here](#).

The April issue of **Virginia Lawyer** magazine is here! The Intellectual Property Section took the reins this month with articles about IP law. Read the digital version by clicking on the magazine [→](#)



Awards

Michael HuYoung of Barnes & Diehl in Richmond has been chosen as the Virginia State Bar Diversity Conference's 2019 Clarence M. Dunnville Jr. Achievement Award recipient. The award, named after notable civil rights lawyer Clarence Dunnville, honors a Virginia lawyer who fosters diversity in the Virginia legal profession.



Palma Pustilnik, Senior Staff Attorney and Director of Sexual Assault Advocacy Services at the Charlottesville office of Central Virginia Legal Aid Society, has received the 2019 Legal Aid Award honoring excellence in legal aid society work.

Zachary McDonnell of the William & Mary Law School class of 2019 has been awarded the Oliver White Hill Law Student Pro Bono Award which honors "extraordinary law student achievement in the areas of pro bono publico and under-compensated public service work in Virginia."



Tom Edmonds of Richmond has received the Section on the Education of Lawyers' William R. Rakes Leadership in Education Award.

The awards will be presented at the **VSB Annual Meeting** on June 14th in Virginia Beach.

On April 11, **Peter Buchbauer** of Buchbauer & McGuire in Winchester received the Family Law section's highest honor: the Betty A. Thompson Lifetime Achievement Award that recognizes and honors an individual who has made a substantial contribution to the practice and administration of family law in the Commonwealth of Virginia.



Looking for a job? Or hiring for a legal position? The **VSB Classifieds** offer you a cost-effective way to reach all 50,000 VSB members online and in the *Virginia Lawyer* magazine. Ads of 50 words or less for legal jobs are **free** to VSB members.

Stay connected to your bar:



VSB Member Resources

This email is a service of the VSB and a benefit of your membership. Unsubscribers will not receive notices about changes to the rules of professional conduct, legal ethics opinions, member compliance/MCLE reminders, presidents' messages, or notices from sections and conferences of which they are a member.

PLEASE NOTE: Do not "update profile" below to change your email with the VSB. Do that here: **VSB member portal**.

Virginia State Bar | 1111 E. Main Street, Suite 700, Richmond, VA 23219

[Unsubscribe hall@vsb.org](mailto:Unsubscribe_hall@vsb.org)

[Update Profile](#) | [About our service provider](#)

Sent by vsbnews@vsb.org



AFFIDAVIT

I, Karen A. Gould, Executive Director at the Virginia State Bar, do hereby swear and affirm that the foregoing documents are true copies of the original documents on file in the offices of the Virginia State Bar regarding amendments to Rules 1.17, 1.18 and 5.5.

Given under my hand this 29th day of October 2020.

Karen A. Gould
Karen A. Gould

STATE OF VIRGINIA
CITY OF RICHMOND, to-wit:

I, a Notary Public in and for the Commonwealth of Virginia, do hereby certify that Karen A. Gould, personally known to me, appeared in person before me and was by me duly sworn and thereupon executed in my presence and acknowledged to me the truth and voluntariness of the foregoing Affidavit.

Given under my hand this 29th day of October 2020.

Louann Weakland
Notary Public

My Commission Expires: 9/30/2023.

